No. 6.

Brief of Cards for Appt.

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Supreme Court of the United States

OCTOBER TERM, 1896.

No. ~~42~~ 6.

MANUEL CRESPIN ET AL., *Appellants*,

vs.

THE UNITED STATES.

Argument for Appellants.

HENRY M. EARLE,
Attorney.

PRESS OF W. F. ROBERTS, WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 42

MANUEL CRESPIN ET AL., *Appellants*,

vs.

THE UNITED STATES.

This case rests upon a grant in writing, made by Antonio Sandoval, an officer of the Mexican government, to the community of San Antonito, on March 24, 1840. The grant document is in the customary and usual form, and consists of a petition, order, report, granting decree and certificate of juridical possession. The original cannot be found, but a *testimonio*, or copy, is produced by the proper custodians—the grantees.

In McPhaul *vs.* Lapsley (20 Wall., 264) it was held that a *testimonio* under the Spanish law is considered as a second original and of equal validity with the original itself.

This *testimonio* is somewhat mutilated, but the contents of the missing portion have been substantially proved.

The delivery of juridical possession is also shown by two of the original grantees, who, with their co-grantees, their descendants and legal representatives, 300 or more in number, have continued in the peaceable and undisputed possession of the tract from that time to the present day. There are no adverse claimants.

The tract has never been officially surveyed, but its natural boundaries are well defined and certain.

It is admitted herein (Record, p. 33, f. 64) and shown in the case of United States *vs.* Chaves (159 U. S., 452) that the archive records of New Mexico were destroyed and lost.

and it is part of the history of the Territory that they were scattered to the four winds during the administration of Governor Pile, through no fault or negligence of any of these land claimants.

THE AUTHORITY TO MAKE THE GRANT.

The petition was dismissed by the court below because authority to make the grant was not shown by some positive law or regulation of the Mexican government, it being assumed to have been made by a "prefect."

The grant in question does not purport to be made by a prefect. It is signed "SANDOVAL," and we must turn to the evidence and to the history of the country in order to ascertain who Sandoval was and in what capacity he acted.

The testimony shows that he was, at or near the time of making this grant, a prefect (p. 31, f. 61; 21, f. 41).

It seems that there has been brought to light no law or regulation expressly empowering prefects to make grants of land generally; but it is a fact that these officers, from the date of their creation in 1836 to the change of flag, did exercise this authority, and made several grants which were subsequently confirmed by the Congress of the United States, to which reference was made in the court below (15, f. 29). As to the effect of such confirmations on similar grants, in United States *vs.* Arredondo (6 Pet., 691, 713, 727) the Supreme Court says:

> Where Congress has, by confirming the report of commissioners or other tribunals, sanctioned the rules and principles on which they were founded it is a legislative affirmance of the construction put by these tribunals on the laws concerning the authority and prescribing the rules by which it should be exercised; or what is to all intents and purposes, of the same effect in laws, it is a legislative ratification of an act done without previous authority; and this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done.
> * * *

> "If it were not a legal presumption that public and responsible officers, claiming and exercising the right of disposing of the public domain, did it by the order and consent of the government in whose name the acts were done, the confusion and uncertainty of titles and possessions would be infinite."

Mitchell *vs.* United States (9 Pet., 641), the Supreme Court says:

> "The confirmation of similar grants, made by acts of Congress or by boards of commissioners acting under their authority, is also powerful evidence of the lawful exercise of the authority of these officers, and, being proceedings under the treaty and laws, they are made a rule by which, among others, we may adjudicate on the claims of the present parties."

These prefect grants were invariably made to communities and towns, and in no instance, as far as can be ascertained, has one been made to a single individual.

The nearest approach to a positive law authorizing prefects to make grants of land of the character above mentioned will be found in paragraph 77 of the law of March 20, 1837 (Land Laws of Spain and Mexico, Reynolds, 221), which is as follows:

> "77. They (prefects) shall regulate, administratively and in conformity with the laws, the distribution of the common lands in the towns of their district, providing there is no litigation pending in regard to them, the right being reserved to the parties in interest to apply to the governor, who, without further appeal, shall decide what is most proper, with the concurrence of the departmental council."

It was under this they acted. No grant was made by them in New Mexico prior to that time. The proceedings under this grant were in the nature of a *denouncement;* the former grantees had abandoned the land for fifteen years (6, f. 11). No "litigation" was "pending," and the distribution of the prefect became final. In one case cited by appellants in the court below, that of the town of San Pedro, there was "litigation pending," and the matter was referred to the governor, who confirmed the grant made by the prefect.

The prefects construed this law as conferring authority on them to grant lands to communities and towns; this construction was acquiesced in by the Mexican government, through the governor, and by the United States, through the confirmation by Congress of similar grants.

The prefect was a territorial officer next in rank to the governor, and was appointed by him (decree of December 29, 1836; law of March 20, 1837). During the latter's absence or sickness he was frequently delegated to act in his place, and by paragraph 20 of the law of March 20, 1837 (*supra*) the governor was authorized thus to delegate. Manuel Armijo, the then governor, was a man of unusual activity. In the insurrection, Texan invasion and Indian campaigns during his long term of office, he took the field in person, and delegated one of his prefects to act during his absence. In 1839 the title of *commandante-general* was bestowed upon him.

These appointments, when he was absent for any considerable period of time, are matters of history, and thus we find that in 1841 Antonio Sandoval performed the duties of governor while Armijo was repelling the Texans (Bancroft's History of New Mexico and Arizona, 310, 315, note). Subsequently three others acted at different times (*ibid*).

The evidence shows that the original grantees herein went first to Santa Fé, the seat of the territorial government, to obtain a grant from the governor himself (18, f. 35; 39, f. 76). It does not appear whether or not they saw the governor, but it is in evidence that they were directed to apply to Antonio Sandoval. At the time of the grant Sandoval was called by some other name than "prefect," but the witness does not remember what it was (37, f. 71); he held various positions under the government (31, f. 61).

Now, the reasonable conclusion arising from these established facts is that Manuel Armijo was in the field, performing the duties of *commandante-general*, at the time this grant was petitioned for, and had delegated his civil authority to the next

man in official station, namely, the prefect of the district, Antonio Sandoval.

The appointment of Sandoval as acting governor the year following the granting of this land was a ratification of the acts done by him prior to that time, and operated as a confirmation of this grant.

THE GOOD FAITH OF THE GRANTEES.

The original grantees, 27 or 28 in number (9; 14, f. 27), were placed in possession on the 29th day of March, 1840, and they have, with their descendants and legal representatives, remained in the continuous and undisturbed occupancy of the tract to the present day (38, f. 74), cultivating and improving the same, making it a home for themselves and their families, raising thereon their children and grandchildren, and passing their little lots and houses by will or operation of law from generation to generation.

At this time there are 300 or more residents on the land claiming by virtue of this grant (19, f. 37; 27, f. 53). There are no adverse claimants (37, f. 53; 38, f. 74), and no adverse claims were filed in the court below.

The absolute good faith of the appellants is beyond cavil.

PRESCRIPTION.

The grantees and their legal representatives have now been in possession of the tract for more than 56 years; they went in under color of title, and their absolute good faith is shown.

In the Spanish dominions all the public lands belonged to the crown, but a possession of 40 years was sufficient to prescribe even against the king. *Liber 11, title 8, law 4*, of the *Novissima Recopilacion*, declares—

> "Seeing that some persons in our dominions hold and possess some cities, towns and places, and civil and criminal jurisdictions, without having a title for the same from us, nor from the kings, our predecessors, and

> it has been doubted whether the above-mentioned can be acquired from us and our crown through time, we ordain and order that possession immemorial, when it is proved how and when, and with the circumstances required by the law of Toro (which is *law 1, title 17, liber 10*, is sufficient to prescribe against us and our successors as regards cities, towns and places, and civil and criminal jurisdictions, and anything growing out of these, and everything belonging to that lordship and jurisdiction annexed: *Provided, always*, that the time of the aforesaid prescription be not interrupted or broken by us or by our order, or of others in our name, naturally or civilly. But the supreme jurisdiction, civil or criminal, which kings possess by greatness and royal power, which is to act aed to enforce where other lords and judges fall off, we declare that this cannot be obtained nor prescribed through said time, nor any other; and, in the same way when the laws say that things of the kingdom cannot be obtained thro' time, it is to be understood the dues and tributes to us belonging."
>
> 2 White, 736.

Law 14, title 12, liber 4, likewise recognizes a "just prescription."

And by the royal regulation of October 15, 1754, "long possession" is a "just title by prescription" in certain cases, although the persons claiming went into possession without color of title whatever.

Possession has always been given the greatest weight in considering imperfect claims or grants.

See U. S. *vs.* Wilson, 1 Black 267.

U. S. *vs.* Chaboya, 2 *Ib.*, 593.

U. S. *vs.* Rocha, 9 Wall., 639.

In Serrano *vs.* United States (5 Wal., 451), the court says:

> "If claimant had entered into possession under a claim of right, and had title papers, though imperfect, he might say that the length of his possession entitled him to the favorable consideration of the court."

In the case of United States *vs.* Alviso (23 How., 319), there was a mere permission to occupy the land until the title

was perfected. Under this license the claimant occupied the land for 14 years. There was no evidence whatever that the title was ever perfected, but the court sustained the claim.

On July 16, 1819, the king of Spain decreed that—

> "2. In the absence of other title, a just possession, that is a possession of 40 years, duly proved according to law, shall be admitted and respected.
>
> "3. Those who have acquired lands by grant, purchase, agreement or *prescription*, have a right to dispose freely of them, whether said lands be in a state of cultivation or otherwise.
>
> 2 White, 562.

The want of approval by the constituted authorities will not affect the *validity* of a grant.

U. S. *vs.* Johnson, 1 Wall., 326.

Hornsby *vs.* U. S., 10 *ibid.*, 224.

This was the law as it existed at the time of the independence of Mexico, and it remained the law of that country until expressly changed.

In the case of United States *vs.* Chaves (159 U. S., 452), in passing upon the validity of a grant that was proved *wholly by parol*, the Supreme Court said:

> "There is the weighty fact that for nearly 60 years the claimants and their ancestors have been in the undisturbed possession and enjoyment of this tract of land.
>
> * * *
>
> "Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for 20 years, and that such rule will be applied as a *presumptio juris et de jure* wherever by any possibility a right may be acquired in any manner known to the law."

In Beard *vs.* Federy (3 Wall., 479) the court says:

> "A right or title from the Mexican government need not necessarily be evidenced by writing. It may in

> some instances rest upon the general law of the land, as was usually the case with title of municipal bodies to their common lands."

Mr. Justice Field, in the case of United States *vs.* Pico (5 Wall., 536, 540), speaking of the methods whereby lands were obtained in the Mexican territories, says :

> "A pueblo [town] once formed and officially recognized became entitled, under the laws of Mexico, to the use of certain lands for its benefit and the benefit of its inhabitants, and the lands were, upon petition, set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given."

In Brownsville *vs.* Cavazos (100 U. S., 138) it was held that by the laws in Mexico in force in 1826 a pueblo or town became entitled to four square leagues when recognized.

It is very evident, therefore, that the grant in question is one which the republic of Mexico would have recognized, and, under its usages and customs, was bound to recognize ; it belongs to a class which the government of the United States, through Congress and the courts, has repeatedly recognized ; and it is one which the act of March 3, 1891, executing the provisions of the treaty of Gaudalupe Hidalgo, empowers this court to confirm. The act was remedial in its nature, and a technical construction should not be placed upon it. The intention of Congress was not to confiscate the homes of these unlettered claimants, nor to throw them on the tender mercies of the land speculator. We submit that, in a case like this, the claimants are not bound to show to the exclusion of every other possible hypothesis that the officer making the grant had authority to do it. The equities are all with the appellants, and they are absolutely without remedy except in this forum.

Respectfully submitted,

HENRY M. EARLE,

Attorney for Appellants.

ASSIGNMENT OF ERRORS.

1st. Error in not holding that grantees had perfect title by prescription.

2nd. Error in holding prefect had no authority to make this grant, under the laws of Mexico.

3rd. Error in not holding that this grant is one that Mexico was bound to confirm and that the United States should have confirmed under Section 13 of an Act of Congress approved March 3, 1891.

4th. Error in not holding title perfect at date of change of flag.

5th. Error in holding that granting power was without authority.

6th. Error in finding contrary to the evidence.

7th. Error in not finding that the petitioners were entitled to a confirmation of this grant.